

# ATTACHMENT 40

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3

4   IN RE:    PROCESSED EGG PRODUCTS:                   MDL NO. 2002  
5   ANTITRUST LITIGATION                                   08-MDL-02002

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7                   PHILADELPHIA, PA  
8                   - - - - -  
9                   NOVEMBER 26, 2019  
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12   BEFORE:       THE HONORABLE GENE E.K. PRATTER, J.  
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14                  - - - - -  
15                  TRANSCRIPT OF TRIAL PROCEEDINGS  
16                  DAY 17  
17                  - - - - -  
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19  
20  
21                  KATHLEEN FELDMAN, CSR, CRR, RPR, CM  
22                  Official Court Reporter  
23                  Room 1234 - U.S. Courthouse  
24                  601 Market Street  
25                  Philadelphia, PA 19106  
                    (215) 779-5578

(Transcript produced by mechanical shorthand via C.A.T.)

1 Have a nice holiday. Travel safely.  
 2 THE WITNESS: Thank you, Your Honor, you too.  
 3 THE COURT: Thanks.  
 4 I'll tell you what, why don't we regroup here, take  
 5 a very short break. There's another witness, and that timing  
 6 will work out just fine. Okay, ten minutes, please be back  
 7 ready to go.  
 8 THE DEPUTY CLERK: All rise.  
 9 (Jury out.)  
 10 THE COURT: Okay, ten minutes.  
 11 (After recess:)  
 12 THE COURT: Okay, Mr. Coyle, could you bring the  
 13 jury back.  
 14 (Jury in.)  
 15 THE DEPUTY CLERK: All rise.  
 16 THE COURT: Okay, you-all may take your seats.  
 17 And some Defendant may call the next witness.  
 18 MR. CARTER: Your Honor, the Defendants call  
 19 Greg Marshall.  
 20 THE DEPUTY CLERK: Could you actually stand and  
 21 raise your right hand.  
 22 (Witness affirms.)  
 23 THE WITNESS: I affirm.  
 24 THE DEPUTY CLERK: Could you please have a seat.  
 25 Please state your full name and spell your last name for the

1 record.  
 2 THE WITNESS: Gregory Dean Marshall,  
 3 M-A-R-S-H-A-L-L.  
 4 THE COURT: Good afternoon, Mr. Marshall. How are  
 5 you doing?  
 6 THE WITNESS: Good afternoon. I'm good. How are  
 7 you?  
 8 THE COURT: Well, I'm, you know, coming in for a  
 9 landing here, as is everybody.  
 10 THE WITNESS: Right.  
 11 THE COURT: I hope you are comfortable and that you  
 12 keep your voice up, okay.  
 13 THE WITNESS: I'll do my best.  
 14 THE COURT: Go ahead.  
 15 GREGORY DEAN MARSHALL,  
 16 called as a witness herein by the Defendants, having first  
 17 duly affirmed, was examined and testified as follows:  
 18 MR. CARTER: Allen Carter on behalf of Rose Acre  
 19 Farms.  
 20 DIRECT EXAMINATION  
 21 BY MR. CARTER:  
 22 Q. Mr. Marshall, where are you currently employed?  
 23 A. Rose Acre Farms.  
 24 Q. And what is your current title with Rose Acre Farms?  
 25 A. Chief Financial Officer.

1 Q. Can you please tell the jury a little bit about your  
 2 educational background?  
 3 A. Sure. I graduated in 1990 from St. Joseph's College with  
 4 Bachelor's Degree in Accounting.  
 5 Q. And after you graduated from St. Joseph's College, did  
 6 you pursue any other degrees or certifications?  
 7 A. Yes, I did. I also am a Certified Public Accountant in  
 8 the State of Indiana.  
 9 Q. And after you graduated from St. Joseph's College, did  
 10 you go to work?  
 11 A. Yeah. My parents kind of wanted it that way. Yes, I  
 12 went to work for Ernst & Young and was there for three and a  
 13 half years and then worked at a company called Arvin North  
 14 America Automotive for a year.  
 15 Q. What year did you leave Arvin Automotive?  
 16 A. I left in December 1994.  
 17 Q. And where did you go to work after that?  
 18 A. I went to work at Rose Acre Farms right after that.  
 19 Q. 1995?  
 20 A. January of 1995, correct.  
 21 Q. And what was your first position at Rose Acre Farms?  
 22 A. My first position was senior financial analyst.  
 23 Q. And what were your duties as senior financial analyst?  
 24 A. I wore a lot of hats for the company when I first  
 25 started. I helped the accounting department out with

1 financial statements, preparation. I did a lot of our tax  
 2 work, did a lot of special project work, created a budgeting  
 3 process for the company, worked on a lot of expense analysis,  
 4 capital expenditure analysis, you know, calculating rates of  
 5 return, stuff like that.  
 6 Q. You mentioned capital expenditures. Could you explain to  
 7 the jury what that is?  
 8 A. Yeah. Capital expenditures would be any type of  
 9 equipment purchase or if we were looking to expand the  
 10 facilities with buildings, equipment, any type of large --  
 11 large dollar items.  
 12 Q. And how long were you the senior financial analyst at  
 13 Rose Acre Farms?  
 14 A. I guess from January 1995 until March of 2007.  
 15 Q. And what title did you take in January of 2007?  
 16 A. March of 2007?  
 17 Q. March of 2007.  
 18 A. Chief Financial Officer at that time.  
 19 Q. You've been Chief Financial Officer ever since?  
 20 A. Yes.  
 21 Q. How did your duties change at Rose Acre Farms as the  
 22 Chief Financial Officer?  
 23 A. Probably the biggest change was I then became responsible  
 24 for all of our banking relationships, procuring debt, dealing  
 25 with leases, came a little bit more active at the board level,

1 making recommendations to the board on different -- whether it  
 2 be expansion items or, you know, whether to take a loan out.  
 3 So a lot of the same type of work, just maybe at a higher  
 4 level.

5 Q. So if I understand correctly, you're coming up on your  
 6 25th anniversary at Rose Acre Farms?

7 A. I am.

8 Q. Are you going to get a watch?

9 A. I don't think I'm going to get a watch. No. Get a dozen  
 10 eggs on Monday.

11 Q. Is it fair to say over the 25 years, you've become  
 12 familiar with Rose Acre's business model?

13 A. Yes, I have.

14 Q. Let's talk a little bit about the business model. The  
 15 jury's heard, it's correct, is it not, that Rose Acre Farms  
 16 sells both shell eggs and egg products?

17 A. Yes, that's correct.

18 Q. What percentage of Rose Acre's business comes from shell  
 19 eggs?

20 A. It varies year to year, but somewhere in the 70 to  
 21 80 percent range is attributable to the shell eggs.

22 Q. And what percentage of Rose Acre's egg business comes  
 23 from egg products?

24 A. 20 to 30 percent of the egg sales are egg products.

25 Q. Does Rose Acre have any other streams of revenue?

1 A. Yes, we do. We sell -- we have a soybean processing  
 2 plant. So we sell bean bale and soybean oil into the open  
 3 market. We have self-fertilizer, chicken litter manure waste.  
 4 We have some farming operations in South America, mainly road  
 5 crop and cattle down there, but eggs are the primary revenue  
 6 source.

7 Q. Circling back to egg products, what kind of egg products  
 8 does Rose Acre sell?

9 A. We sell liquid eggs and dried eggs, and then we also sell  
 10 some inedible dried egg into the pet food markets. On the  
 11 liquid side, we sell either whole egg or yolks or whites,  
 12 anywhere from a semi-trailer load container down to a little  
 13 2-pound carton that you see in the grocery store. So...

14 On the dried side, the same thing, we sell whole  
 15 egg, whites and yolk, and most of that product is sold in a  
 16 50-pound box. A lot of bakeries use that product.

17 Q. How many facilities does Rose Acre have?

18 A. Egg-breaking facilities?

19 Q. Sure.

20 A. Okay. They have three -- we have three egg-breaking  
 21 facilities, two in Indiana and one in Iowa.

22 Q. Do all of your -- your egg facilities have egg-breaking  
 23 facilities?

24 A. No. Only those three locations have egg-breaking  
 25 capacities.

1 Q. Now, on the dried egg side, where does Rose Acre have  
 2 dried egg facilities?

3 A. We have an egg -- egg white dryer located in Marshall,  
 4 Missouri, and we have a yellow dryer in Guthrie Center, Iowa,  
 5 and those are our only two dryer plants.

6 Q. Rose Acre sells eggs by the dozen, correct?

7 A. Correct.

8 Q. How does Rose Acre sell liquid egg?

9 A. Liquid egg is usually sold by the pound as opposed to  
 10 the --

11 Q. And what's the conversion there between dozens of eggs  
 12 and pounds of eggs?

13 A. After you break -- after you break a dozen eggs, you get  
 14 about 1.25 pounds is the equation.

15 Q. As Rose Acre's CFO, are you familiar with the pricing  
 16 structure that Rose Acre has in place with its egg products  
 17 contracts?

18 A. Yes, I am.

19 Q. How does the pricing in Rose Acre's egg products'  
 20 contracts differ from those it has with its shell egg  
 21 customers?

22 A. Probably the biggest thing is a lot of the egg products'  
 23 contracts are sold more as a fixed price or some type of  
 24 grain-based cost-plus formula; whereas most shell eggs are  
 25 sold off of a market-type contract. A lot -- also, the

1 products tend to be a little longer term deals as the shell  
 2 eggs do. A lot of those will run two to three years  
 3 sometimes; whereas a lot of the shells are a lot shorter than  
 4 that.

5 Q. How often are egg products' pricing contracts -- how  
 6 often is the pricing in egg products' contracts adjusted?

7 A. Well, if it's a fixed-price contract, it's not adjusted.  
 8 It would be a stated term and the price would be fixed for  
 9 that term. On a grain-based contract, typically those are  
 10 adjusted on a quarterly basis, looking at what grain prices  
 11 have done for the previous quarter. Sometimes it might be six  
 12 months, but the predominant one is usually a quarterly look at  
 13 grain prices.

14 Q. And what about shell eggs, how often are shell egg prices  
 15 adjusted?

16 A. Shell eggs depends on the customer, but some of them as  
 17 often as weekly. Some of them will use a two- or three-week  
 18 Urner Barry average to adjust, so it really kind of depends,  
 19 but they're definitely a lot shorter term than the egg  
 20 products.

21 Q. Based on your experience at Rose Acre, have you developed  
 22 an understanding for why egg products' customers prefer the  
 23 longer fixed contracts?

24 A. Yeah. And this is my opinion, but, you know, I think a  
 25 lot of times our egg products are going into other products as

1 ingredients. So by using longer term contracts and fixed  
 2 price or more -- less volatile pricing, it gives them a stable  
 3 price that they can use to price their products out into the  
 4 marketplace and not see the volatility in their ingredient  
 5 pricing.

6 Q. As CFO at Rose Acre, have you become familiar with the  
 7 costs associated with producing eggs?

8 A. Yes.

9 Q. Up to the point where the chicken lays the egg, so to  
 10 speak, what are some of those costs?

11 A. Obviously feed costs is the largest -- the largest one.  
 12 Then obviously we have, you know, the normal costs of labor,  
 13 people that are taking care of the birds, the utilities. You  
 14 know, your fixed costs of depreciation of property taxes, of  
 15 insurance, those are the main ones.

16 Q. You mentioned feed costs was the largest. What  
 17 percentage of the costs are feed costs?

18 A. Feed costs usually ranges between 55 to 60 percent of the  
 19 total cost of an egg.

20 Q. Once the egg is laid, are there different costs  
 21 associated with processing shell eggs versus eggs that go into  
 22 the egg product market?

23 A. Yeah. It's a different -- a completely different  
 24 process. So an egg that's going into breaking will come out  
 25 of the chicken house and go into an egg washer and then into

1 an egg breaking machine, which literally -- it's a scientific  
 2 name, egg breaking machine, that's what it does, it breaks the  
 3 egg, and separates the egg into -- if you're separating, it  
 4 will separate it into the whites and the yolk, if you're just  
 5 making whole egg, it will just mix the two. Beyond that, it  
 6 kind of depends on what the product's going to be sold as. If  
 7 it's going into a tanker, typically the liquid would just go  
 8 into a silo and then fill into a tanker truck. All the way  
 9 down to the carton, where there's obviously a lot of  
 10 additional processing equipment and filler machines, is what  
 11 they call them, that fill the -- either the small containers  
 12 or the cardboard box with the liner or whatever type of  
 13 packaging it's going into.

14 Q. Since you started at Rose Acre in 1995, I want to talk a  
 15 little bit about the capital expenditures that you've  
 16 witnessed there.

17 A. Um-hum.

18 Q. How has the business changed at Rose Acre since then?

19 A. I think when I came to work there in 1995, we had 11 or  
 20 12 million chickens, and today we have 24 or 25 million  
 21 capacity. I think employee-wise we might have had 1,000  
 22 employees, I'm not positive on that, but today we're -- we  
 23 have 2,600 team members, so the company's grown quite a bit.

24 The other way I've seen -- seen the growth, I guess,  
 25 is -- is when I started with the company we were primarily

1 midwest based, and we've reached out into the southeast and  
 2 now into the west coast with an expansion in Arizona. So I've  
 3 seen the footprint of the company grow as well as the overall  
 4 size.

5 Q. How are you involved in the growth at Rose Acre Farms?

6 A. Well, being CFO my role is -- when we talk about  
 7 expansions or we talk about changes in equipment, my role is  
 8 to evaluate that equipment and -- and look at the return on  
 9 investment that might be available, look at the payback that  
 10 might be available, look at the cost, obviously, of what we're  
 11 talking about doing.

12 If it's a large enough project, obviously, we have  
 13 to figure out how we're going to pay for it, so I'll look at  
 14 financing options on those types of projects, and ultimately I  
 15 usually will make a recommendation to the board on the  
 16 projects and also on how we should go about financing it, and  
 17 provide them with return on investment and payback information  
 18 as well.

19 Q. How often does the board at Rose Acre Farms take your  
 20 recommendations?

21 A. Um, not always. Sometimes. There's times that I cringe  
 22 when they don't and there's times that I've been wrong, so it  
 23 works out quite nicely, actually.

24 Q. How many birds, again, did Rose Acre have when you  
 25 started at Rose Acre Farms?

1 A. 11 or 12 million.

2 Q. And how many birds does it have today?

3 A. 24, 25 million.

4 Q. Do you know how many eggs Rose Acre produces per year  
 5 today?

6 A. Today our production is about 520 million dozen a year.

7 Q. How has that number changed since you started at Rose  
 8 Acre?

9 A. I don't know the exact increase, but obviously it's grown  
 10 quite substantially.

11 Q. Could you explain to the jury a little bit how Rose Acre  
 12 moved from a 10 million bird company to a 24, 25 million bird  
 13 company?

14 A. Sure. There were basically four ways, I guess, that we  
 15 grew during this time. We had -- we had existing facilities,  
 16 some of which we went in and did some remodeling on, and due  
 17 to equipment designs and improvements and overall improvements  
 18 in the equipment, it allowed us to increase capacity, say, in  
 19 the same building space. Also, in some of our existing  
 20 facilities, we went in and just added new housing to what was  
 21 already there, added some bird numbers. We also did several  
 22 acquisitions during that time frame of other companies. And I  
 23 guess the final way would be two or three examples of we went  
 24 out and did just brand-new greenfield sites that were -- that  
 25 were new to Rose Acres.

1 Q. When Rose Acre acquired farms did it make any capital  
2 improvements on those farms?

3 A. Some of them it did, yeah. Not all of them, though.

4 Q. Since 2002 has Rose Acre used each of those methods in  
5 order to expand its company size?

6 A. Yes.

7 Q. Has Rose Acre expanded all of its existing facilities  
8 since 2002?

9 A. No.

10 Q. Why not?

11 A. When you look at expansions, you have to try to, number  
12 one, you know, we look at our egg need and that geographic  
13 area and does it make sense to expand a facility. Probably  
14 the next biggest thing we look at is, you know, is there  
15 adequate grain supply there, is there adequate workforce  
16 there. And the final thing, from an operations standpoint is  
17 you have to -- you have to be careful and make sure that you  
18 size the production side of the farm to the processing side of  
19 the farm because if you don't, if you've got too much  
20 production and not enough processing time, then you end up  
21 having extremely long -- extremely long run days that make  
22 life really difficult on your employees and usually hurt the  
23 quality of your product. So you want to match up that  
24 production side with the processing side so it's a nice fit  
25 and a nice concise workday for your employees.

1 Q. How, if at all, does -- do the state's regulatory  
2 environment play a role in your decision process?

3 A. The regulatory environment definitely plays a role.  
4 There's -- some states, obviously, it's easier to get a permit  
5 to building something than others. Typically we found that  
6 it's usually easier to get a permit to expand an existing  
7 facility where you already have production as opposed to going  
8 to a greenfield site. So it's definitely something that --  
9 that's considered and evaluated with every expansion project.

10 Q. And what's a greenfield site?

11 A. A greenfield site would just be unimproved land. In our  
12 case, most of the time it's a cornfield or soybean field or --  
13 in our last expansion case it was barren desert land in  
14 Arizona, but just unimproved land.

15 Q. So one of the ways you mentioned that Rose Acre has  
16 expanded its size is by expanding its existing facilities. I  
17 want to talk about that for just a minute. What strategies  
18 has Rose Acre employed to expand its existing facilities?

19 A. Well, as I mentioned before, we've expanded by remodeling  
20 and then we've also expanded by adding additional buildings,  
21 additional laying houses at different properties.

22 Q. And how does remodeling a house expand the size of that  
23 house?

24 A. Typically, it's because the equipment that's in there is  
25 old and with developments that have been made in equipment,

1 improvements that have been made in the equipment, typically  
2 you can -- you can increase your -- your bird -- bird space in  
3 that same house.

4 Q. New equipment?

5 A. Yeah.

6 Q. Could you name for the jury some of the existing  
7 facilities at Rose Acre Farms that were expanded after Rose  
8 Acre joined the Certified Program in 2002?

9 A. Sure. We expanded quite a few of them. The Cort Acre  
10 facility, we went in and remodeled that entire facility and  
11 picked up approximately 1.4 million layers there. Our Lincoln  
12 County facility, we went into it and added two brand-new  
13 houses, added about a half million birds of capacity there.

14 Our Pulaski County facility we went in and added four large  
15 houses there, added about a million birds of capacity at that  
16 facility. Our Johnson County facility in Missouri we went in  
17 and added two large houses, added about a half million birds  
18 there. Our Stuart, Iowa facility we added three large houses  
19 there and about 750, 800,000 birds of additional capacity  
20 there. Germantown, which is one of our acquisitions, we went  
21 in and added two large houses there, about 400,000 birds. So  
22 quite a few of them.

23 Q. Let's talk about Pulaski for a moment. When did you  
24 expand Pulaski?

25 A. Pulaski was completed in 2002.

1 Q. And what method did Rose Acre use to expand Pulaski?

2 A. As I mentioned, we added four brand-new houses there. It  
3 was about a million-bird capacity.

4 Q. And how much did Rose Acre spend to expand Pulaski?

5 A. About six and a half million dollars.

6 Q. Cort Acres, how did Rose Acre expand Cort Acres?

7 A. Cort Acres was a -- is a large farm, it had 36 original  
8 houses. We remodeled 32 of them. The four we didn't was  
9 because of the processing area that set in the middle of the  
10 farm, so we needed some additional room for processing. So we  
11 took four of the buildings out and only expanded 32 of them.  
12 It resulted in a -- in a capacity increase of about  
13 1.4 million birds at a cost of about \$25 million there.

14 Q. And when did Rose Acre begin that remodel?

15 A. The remodeling process there began in 1997 and was  
16 completed in 2005.

17 Q. Stuart, Stuart, Iowa, how did Rose Acre expand Stuart?

18 A. Stuart, Iowa was a farm that originally only had three  
19 houses in it, about 800,000 birds. We went in in 2005 and  
20 added three more houses with additional capacity of about  
21 another 800,000 birds. So the capacity went up to about  
22 1.6 million there. I think we spent about \$7 million on that  
23 total expansion.

24 Q. Now, you also mentioned Lincoln County. Where is Lincoln  
25 County?

1 A. Lincoln County is in Missouri, about an hour west of  
 2 St. Louis. We went in there and added two large houses, it  
 3 was an existing facility. Added about a half million birds of  
 4 capacity there, at about four and a half million dollar cost  
 5 on that expansion.

6 Q. And Johnson County, where is Johnson County?

7 A. Johnson County is also in Missouri. It was a similar  
 8 type of expansion. We went in an existing facility, added two  
 9 large houses, gained about a half million birds of capacity  
 10 and spent about that same amount of money.

11 Q. And when was that?

12 A. That was done in 2005.

13 Q. And the last one, I think you mentioned was Newton  
 14 County.

15 A. Newton County was done in 2009. It was a little -- a  
 16 little different expansion. We spent about \$9 million there  
 17 and went to a -- existing houses there where it was a cage  
 18 system with a manure pit underneath it, and we turned those  
 19 houses into a belted manure system and added two -- so there's  
 20 two floors of birds as opposed to having manure on the bottom.  
 21 There's no manure. The manure is belted out of the house at  
 22 the time it's laid.

23 Q. What was the cost of that improvement?

24 A. The cost was about \$9 million.

25 Q. The second way you mentioned that Rose Acre has expanded

1 is by acquiring farms and then making capital improvements on  
 2 those farms?  
 3 A. Hm-hmm.

4 Q. You mentioned Germantown, I believe. Were there others?  
 5 A. Yeah. We acquired four, four companies during that time,  
 6 or facilities. We acquired Donovan Egg Farm, Germantown,  
 7 County Line, and Crystal Farms.

8 Q. And did Rose Acre expand each one of those?

9 A. No, not each one of them.

10 Q. Which one did it not expand?

11 A. County Line was the one it did not expand. It was -- the  
 12 example I gave a minute ago of the production side and the  
 13 processing side matching, it was a nice fit, and if we were  
 14 going to expand bird numbers there, we were going to have to  
 15 completely redo processing as well, and it just made sense at  
 16 the time, as it was the best financial decision not to expand  
 17 there.

18 Q. Has Rose Acre made any capital improvements at County  
 19 Line?

20 A. We have. We unfortunately had a tornado come through and  
 21 take out a couple of the houses, and we have built back two  
 22 new cage-free houses there now.

23 Q. When did that tornado occur?

24 A. I want to say 2012.

25 Q. Another acquired farm you mentioned was Donovan farm?

1 A. Um-hum.

2 Q. Where is Donovan farm?

3 A. Donovan is in Illinois. It was in -- it was a farm that  
 4 was mothballed by the previous owners. So there were no birds  
 5 there at the time we purchased it. It was a fairly small  
 6 farm, and we purchased it and converted it into a cage-free  
 7 farm, had about 200,000 birds. Due to the size of the farm  
 8 being small, I think we spent just a million dollars there.

9 Q. And when did Rose Acre purchase Donovan?

10 A. 2002.

11 Q. Circling back to Germantown Egg Farm --

12 A. Um-hum.

13 Q. -- when did Rose Acre purchase Germantown?

14 A. Germantown was purchased in June of 2004. It was a  
 15 company that was in existence. I think the owner was just  
 16 ready to go out of the egg business at the time, and we came  
 17 in and bought the -- bought the company, bought the business.  
 18 There was about 600,000 birds there at the time we bought it,  
 19 and I believe we paid seven and a half million for it.

20 Q. And when did the capital improvements there happen?

21 A. We did add -- in 2006 we added two large houses there,  
 22 Germantown, added about 400,000 birds, and then recently in  
 23 the last couple of years, we've added two large cage-free  
 24 buildings there as well.

25 Q. And what was the expense of the capital improvements

1 post-acquisition?

2 A. The first two buildings was around \$5 million. The  
 3 second expansion was around \$12 million for the cage-free  
 4 expansion.

5 Q. And the last -- the last farm you mentioned was Canon Egg  
 6 Farm or Crystal Egg Farm?

7 A. Correct.

8 Q. Where is that?

9 A. It's located down in Georgia. Again, it was an existing  
 10 company that was in operation. The Canon facility was the  
 11 main facility there. It had about 1.3 million layers, and I  
 12 believe we paid 17 and a half million dollars for that.

13 Q. And that was acquired when?

14 A. 2009.

15 Q. Did -- what capital expenditures did Rose Acre make  
 16 there?

17 A. We've done several expansions there. We -- we added a  
 18 pullet farm there. Originally the pullets were being grown  
 19 for the facility at a contract grower. So we built a pullet  
 20 farm there. We built -- added a feed mill to make feed. All  
 21 the feed was being purchased on the outside. We did come in  
 22 in 2014 and add a large house, about 200,000 bird capacity  
 23 house there as well.

24 Q. Could you also explain to the jury what Oconee egg farm  
 25 is?

1 A. Oconee egg farm is another farm down in Georgia. We  
 2 originally purchased -- the name of the company was Nepco Egg  
 3 of Georgia, and we also purchased along with that Oconee,  
 4 which at the time had two houses and added a couple hundred  
 5 thousand chickens.

6 We grew that farm. We built eight additional houses  
 7 there between the 2000 -- 2000 and 2003 time frame, costs of  
 8 about \$12 million on that total add-on there. Then we came  
 9 back in in 2012 and added three large houses, about 250,000  
 10 birds a piece. That expansion pushed \$17 million out of  
 11 Oconee.

12 Q. When was the Oconee purchased?

13 A. Oconee was purchased in 1999, the original purchase.

14 Q. So between 2002 and 2014, how much did Rose Acre spend to  
 15 acquire farms?

16 MR. BJORK: Objection, Your Honor. It goes beyond  
 17 the time period in this case, the recovery period.

18 MR. CARTER: 2002 to 2014.

19 MR. BJORK: Relevance.

20 THE COURT: Well, I'm going to allow it.

21 Just if you could break it down into segments of  
 22 years.

23 BY MR. CARTER:

24 Q. Okay. Mr. Marshall, do you know how much Rose Acre spent  
 25 to acquire new farms between 2002 and 2012?

1 A. Yes. \$40 million.

2 Q. And how much did Rose Acre spend on expanding its  
 3 existing facilities in that same time frame, if you know?

4 A. Existing facilities, we spent about -- right at  
 5 \$100 million in expansion.

6 Q. And how do you calculate the cost of an expansion?

7 A. So that \$100 million would represent only the added  
 8 capacity that was included in the expansion. So, for example,  
 9 if we had a house that had 100,000 birds in it and after the  
 10 remodel it had 150,000, the 100 million would only represent  
 11 that 50,000 bird increase in capacity.

12 Q. So how much in total did Rose Acre expend to expand its  
 13 facilities between 2002 and 2012?

14 A. Total was about 215 million.

15 Q. So 100 -- 100 million plus 40 million is 140 million.

16 Where did the other 75 million come from?

17 A. During that time, the other big -- big component was the  
 18 new facility that we built as a greenfield site in Hyde  
 19 County, North Carolina.

20 Q. When did -- when did Rose Acre purchase the land for the  
 21 Hyde County egg farm?

22 A. The land was -- was purchased in August of 2003. We'd  
 23 been looking in that -- to grow in egg deficit areas and the  
 24 southeastern United States was an egg deficit area. The Hyde  
 25 County facility became pretty intriguing to us for a couple of

1 reasons. One, it has a very large grain belt. There's a big  
 2 corn belt in the eastern side of North Carolina.

3 So a lot of the production in the southeast today,  
 4 all the grain has to be brought in via train. So it was nice  
 5 that there was local grain there. The local farmers embraced  
 6 us there because they kind of lost a lot of the markets for  
 7 their grain. The export market was really all they had to  
 8 turn to. So they were very welcoming to us.

9 The other thing was, it was -- the access to the  
 10 port made Hyde County a potential farm site to do egg exports  
 11 out of fairly easily with little freight cost. Yeah.

12 Q. What was the state of the land when Rose Acre purchased  
 13 it?

14 A. It was unimproved completely. I believe the day we  
 15 bought it, it was a cornfield. So --

16 Q. When did Rose Acre start planning Hyde County egg farm?

17 A. As I mentioned, we were -- we were looking down in that  
 18 area for a site. Obviously once -- once we located the land  
 19 and -- and decided to purchase the land, then obviously things  
 20 started moving quicker. We were trying to decide, you know,  
 21 what size the farm had to be, what type of pullet size we  
 22 needed to support the farm, what kind of feed mill we needed.

23 You know, all of that was involved in the permitting  
 24 process that was started about that time as well. We had  
 25 boots on the ground down in the community meeting with

1 farmers, meeting with economic development folks, meeting with  
 2 some local labor people. We even held a couple of hog roasts  
 3 for the local community down there to introduce ourselves, to  
 4 let them know who Rose Acres was, what our plans were, you  
 5 know, what the labor or job potential was going to look like  
 6 there, our HR benefits, you know, just trying to embrace the  
 7 community at that time.

8 Q. And what was the purchase price of the land at  
 9 Hyde County?

10 A. The land was purchased for \$1.2 million.

11 Q. So after -- after Rose Acre purchased the land for, you  
 12 know, \$1.2 million, and what happened next?

13 A. Obviously, we -- we knew at that point we had a site, so  
 14 we filed for permits to not only build the farm, but also to  
 15 house the birds, to have a manure management plan in place  
 16 that was permitted. We finally received those permits in  
 17 November of 2004.

18 So from that point, construction began. Obviously  
 19 as I said, it was an unimproved site. So we had roads to  
 20 build, we had utilities to get into the site. There was lots  
 21 of -- lots of work going on. In my position and some of the  
 22 other financial people at Rose Acres, you know, once we knew  
 23 the project was a go, then we had to figure out how we were  
 24 going to pay for it.

25 So we had talked to several lenders ahead of the

1 process but didn't really have any commitment at that point.  
 2 So in June of 2005, we were able to get a commitment from  
 3 MetLife, a \$50 million term loan to start construction on the  
 4 site at that point.

5 Q. So at that point, how many houses did Rose Acre plan to  
 6 put on Hyde County?

7 A. The permit was for 14 houses and about 4 million bird  
 8 capacity.

9 Q. After Rose Acre received the financing from MetLife, when  
 10 was Rose Acre -- when was Rose Acre able to finish the Hyde  
 11 County egg farm?

12 A. Well, once we received the financing, the construction on  
 13 the farm started, and then we hit -- we hit 2005 and 2006,  
 14 which were terrible times in the egg market, and we -- our  
 15 average selling price for that period of time was below \$0.50  
 16 a dozen.

17 We got in pretty tough financial shape. We had  
 18 maxed out all of our lines of credit. We burned through any  
 19 surplus cash we had. It was not a fun time. At one point I  
 20 was doing weekly cash flow projections to the banks basically  
 21 to see if we were going to make payroll on Fridays. So it was  
 22 not a good time.

23 Finally, it all culminated in December of 2006. Our  
 24 bank group requested that we have a bank summit meeting that  
 25 we invited all of our lenders to, and Rose Acre management was

1 there to present to the banks a couple of things, a couple of  
 2 big things. Number one, were we going to be strong enough to  
 3 make it through this down cycle. Like I said, we were  
 4 completely leveraged out on every piece that we had, all of  
 5 our facilities had been leveraged.

6 We had a major ask at that meeting and our ask was  
 7 to be allowed to take on additional debt to finish the Hyde  
 8 County farm, and at that point in time, we had seven houses  
 9 that were at some stage of construction at Hyde County. The  
 10 banks -- the meeting ended with the banks basically telling us  
 11 to go away and go make some money and then we'd talk about it  
 12 later.

13 Q. So, Mr. Marshall, what does a \$0.50 egg market mean to an  
 14 egg farmer?

15 A. Well, it means you're not covering your costs and you're  
 16 suffering losses and you're burning through a lot of cash flow  
 17 that your operations are supporting, which is why our lines of  
 18 credit were maxed out.

19 Q. So you mentioned that at the time of that bank meeting,  
 20 Rose Acre had started or was in some stage of construction on  
 21 seven houses?

22 A. Correct.

23 Q. When was Rose Acre able to finish those seven houses?

24 A. The one thing that the banks did concede at the end of  
 25 the bank meeting was that they did allow us to continue work

1 and continue borrowings on those seven houses that were under  
 2 construction.

3 Q. And again, when -- when was that egg meeting or that bank  
 4 meeting?

5 A. That meeting was in December of 2006.

6 Q. And when was Rose Acre able to finish those seven houses?

7 A. Seven houses would have been finished late summer of  
 8 2007.

9 Q. And what happened after Rose Acre finished those seven  
 10 houses?

11 A. Fast-forward to December of 2007, we had a second bank  
 12 meeting with our lenders. Things had gotten a little better  
 13 in the egg business. We had made a little money. Still very  
 14 highly leveraged, still carrying some balances on our lines of  
 15 credit, but the outlook looked brighter. Our ask at that time  
 16 at the bank meeting was to complete three more houses at Hyde  
 17 County to give us a total of ten, and then also to complete  
 18 the concrete work for the remaining four houses covered in the  
 19 permit because the permit -- the building permit was about to  
 20 expire, and as long as we had put the concrete in the ground  
 21 that was considered starting the building. So it met the  
 22 requirements of the permit.

23 We also, at that same meeting, asked for permission  
 24 to consider some expansion on Oconee, which happened down the  
 25 road, that we talked about briefly a minute ago. The outcome

1 of the meeting was the bankers, again, denied -- denied  
 2 approval on that, and that's how that meeting ended.

3 Q. And what happened after that?

4 A. So things continued to get better in the egg business,  
 5 and I don't remember the exact day, but sometime in the spring  
 6 of 2008, the banks did approve for us to complete three more  
 7 houses at Hyde County and do the concrete work to meet our  
 8 permit deadline. Subsequent to that, we also, out of cash  
 9 flow at that point, completed two more houses at Hyde County  
 10 for a total of 12 at the end of the day that were finished.

11 Q. When was Rose Acre able to ultimately finish the 12  
 12 houses at Hyde County?

13 A. I believe December of 2009 was when the last house was  
 14 finished.

15 Q. And how much money did Rose Acre expend on all of its  
 16 construction efforts at Hyde County?

17 A. The entire cost was \$75 million.

18 Q. And how many hens did Rose Acre add as a result of the  
 19 construction of Hyde County?

20 A. Three and a half million.

21 Q. Was Hyde County the last newly built caged facility that  
 22 Rose Acre constructed?

23 A. Caged facility, yes, entire facility.

24 Q. And to be clear, has Rose Acre expanded some of its  
 25 existing caged facilities since 2009?

1 A. There have been some houses put in, yes. The three  
 2 houses out at Oconee were done in 2012 and the one in Canon  
 3 was done in 2014.

4 Q. Since 2009, what, if any, noncaged facilities has Rose  
 5 Acre built?

6 MR. BJORK: Objection, Your Honor, to time period.  
 7 The same objection as before.

8 THE COURT: Well, since 2009.

9 MR. BJORK: Well, it's going past the recovery  
 10 period is our concern.

11 MR. CARTER: I believe it's still relevant, Your  
 12 Honor.

13 THE COURT: Well, you can finish out the picture.

14 Go ahead.

15 BY MR. CARTER:

16 Q. Do you recall the question?

17 A. So in 2010 at our Diamond Egg Farm, we actually converted  
 18 two houses there to an aviary cage-free house. There are  
 19 about 30,000 birds a piece. It's kind of a -- kind of a test  
 20 to get our feet wet with cage-free production. After that  
 21 time, we've -- the first two houses, I guess the two large  
 22 scale cage-free houses we added were at County Line, that I  
 23 spoke of earlier, with replacing the houses that had been  
 24 blown down by the tornado. We also added 1.1 million  
 25 cage-free layers at Pulaski County. We've added 1.1 million

1 layers at Jen Acres. We built a 2 million bird facility in  
 2 Arizona during -- during that time. We also added two  
 3 cage-free houses at our Germantown facility that I mentioned  
 4 earlier as well.

5 Q. On the Arizona facility that you built, what factors did  
 6 Rose Acre consider in determining to build the facility in  
 7 Arizona?

8 A. Arizona was primarily built to take advantage of the  
 9 California egg market. California had passed Prop 12, which  
 10 requires all eggs in California to be cage-free in 2022. So,  
 11 the regulatory situation in Arizona was better than  
 12 California, so we chose to build in Arizona, but primarily to  
 13 support the California market.

14 Q. So from 2002 to 2012, how much money in total has Rose  
 15 Acre spent expanding its facilities?

16 A. From 2002 to 2012?

17 Q. Yes.

18 A. About \$215 million.

19 Q. And why did Rose Acre engage in the growth it did between  
 20 2002 and 2012?

21 A. We engaged in the growth, obviously the UEP Certified  
 22 Program was kicking in and we had customers to supply and we  
 23 knew that was going to reduce numbers at our existing  
 24 facilities, so the company chose every form of expansion  
 25 possible to keep our bird numbers up and to continue to grow.

1 Q. Was Rose Acre only able to keep the status quo with its  
 2 bird numbers?

3 A. During that time frame our bird numbers did increase.

4 Q. And how many birds did Rose Acre add to its total flock  
 5 between 2002 and 2012?

6 A. Our total increase was 7.5 million layers.

7 MR. CARTER: Pass the witness, Your Honor.

8 THE COURT: I'm guessing --

9 MS. SUMNER: No questions.

10 MR. HARRIS: No questions.

11 THE COURT: Okay, cross-examination.

12 CROSS-EXAMINATION

13 BY MR. BJORK:

14 Q. Good afternoon, Mr. Marshall, Your Honor, members of the  
 15 jury, my name is John Bjork. I represent two of the Direct  
 16 Action Plaintiffs, Publix and SuperValu.

17 Sir, let me start off by saying that I recognize I  
 18 may be the last thing standing between everybody and turkey,  
 19 so, please, don't hold that against me.

20 Sir, you testified you've been with Rose Acre since  
 21 1995, correct?

22 A. Yes.

23 Q. Okay. So approximately 25 years? Correct?

24 A. Yes.

25 Q. And you've held the positions, I believe you said of CFO

1 and senior financial analyst during that time?

2 A. Correct.

3 Q. Okay. In those roles, sir, I assume you're familiar with  
 4 the company's yearly finances, right?

5 A. Yes.

6 Q. Including things such as revenue, correct?

7 A. Yes.

8 Q. Okay. And isn't it true, sir, that Rose Acre's revenues  
 9 have nearly tripled from 2002, when it joined the Certified  
 10 Program, to 2008, correct?

11 A. What do you mean by "tripled"?

12 Q. That they're three times what they were in 2008.

13 A. I think that would vary year to year.

14 Q. I'm just asking for a comparison of 2002 when you joined  
 15 the program to 2008?

16 A. I can't answer that.

17 Q. Okay, does that sound like it's in the ballpark of where  
 18 they --

19 A. I think it would depend on what egg markets were from  
 20 year to year.

21 Q. Okay, we can take a look at that. And just for context,  
 22 2008 was when the final cage space phase-in under the  
 23 Certified Program took effect, correct?

24 A. Yes.

25 Q. Okay. Sir --

1 MR. BJORK: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. BJORK:

4 Q. Sir, I've handed you a binder that contains a series of  
5 Rose Acre's financial statements from 2002 to 2012. I'm going  
6 to ask you some questions about some of those statements.  
7 Instead of walking back and forth several times, we've just  
8 created that. There are tabs for each year.

9 A. Okay.

10 Q. Please turn, if you would, to Tab -- the tab for 2002.  
11 And this -- the Court's reference is Exhibit D-0477.

12 A. Yes.

13 Q. Sir, this is a consolidated financial statement for Rose  
14 Acre for fiscal year 2002, correct?

15 A. Correct.

16 Q. Okay. And this type of document, a consolidated  
17 financial statement, is a document that Rose Acre prepares  
18 annually as part of its business, right?

19 A. Yes.

20 Q. Okay. And as the CFO, I'm sure you're familiar with  
21 these types of reports, correct?

22 A. Yes.

23 MR. BJORK: Your Honor, Plaintiffs move to admit  
24 D-0477 into evidence.

25 THE COURT: These are the 2002 financial statements?

1 MR. BJORK: Yes.

2 MR. CARTER: No objection.

3 THE COURT: It's admitted.

4 (Exhibit received in evidence.)

5 MR. BJORK: Okay. May we publish, Your Honor?

6 THE COURT: Yes.

7 BY MR. BJORK:

8 Q. Before getting into the document, sir, am I correct that  
9 Rose Acre's fiscal year runs from July through June of every  
10 year?

11 A. Correct. Our year-end date is always the last Thursday  
12 in June.

13 Q. Okay, so this report is a full 12-month report for the  
14 company, right?

15 A. Yes.

16 Q. Okay. And the numbers in this report are going to  
17 reflect sales that are largely from prior to the time that  
18 Rose Acre joined the Certified Program, correct?

19 A. Yes.

20 Q. Okay. Please turn, if you would, to the third page of  
21 the document. And it's Rose Acre Farms, Inc., and Subsidiary  
22 Consolidated Income Statement. Do you see that?

23 A. Yes.

24 Q. Okay, and just looking first at the revenue numbers, this  
25 report indicates that Rose Acre made just over 217 million in

1 revenue in 2002, right?

2 A. Correct.

3 Q. Okay, and about 122 million of that comes from shell  
4 eggs, right?

5 A. Correct.

6 Q. Okay, and another 61 million or so comes from processed  
7 egg sales, correct?

8 A. Yes.

9 Q. Okay. So staying with revenue for just a moment, if you  
10 go to the right, there's a column titled YTD Per Dozen. Do  
11 you see that?

12 A. Yes.

13 Q. And for shell eggs, the number listed there is just over  
14 \$0.35, correct?

15 A. Yes.

16 Q. And that means that Rose Acre's generating approximately  
17 \$0.35 of revenue for every dozen eggs it produced, correct?

18 A. For every dozen eggs it produced, correct.

19 Q. Okay. And if you look up at the top of that page,  
20 there's a row titled UB Large Average. Do you see that?

21 A. Yes.

22 Q. And that refers to the average Urner Barry market price  
23 for a dozen large graded eggs, correct?

24 A. Yes.

25 Q. And Rose Acre sold most of its shell eggs off of the

1 Urner Barry index, correct?

2 A. Yes.

3 Q. And here it states that the YTD Urner Barry large average  
4 was somewhere between 67 and \$0.68, correct?

5 A. Yes.

6 Q. So that means that the average Urner Barry market price  
7 was roughly \$0.67 over the course of Rose Acre's fiscal year  
8 of 2002, right?

9 A. Yes.

10 Q. And lastly, regarding that income, this report indicates  
11 that Rose Acre had a loss of around 5 million bucks in 2002,  
12 right?

13 A. Yes.

14 Q. Okay. Let's fast-forward to 2008. If you could turn to  
15 the tab labeled that, 2008. It contains Plaintiffs'  
16 Exhibit 624.

17 A. Yes.

18 Q. And this, sir, is a consolidated financial statement for  
19 Rose Acre for 2002, right?

20 THE COURT: 624?

21 MR. BJORK: PX-624, it should be --

22 THE WITNESS: For 2008.

23 BY MR. BJORK:

24 Q. I'm sorry. For 2008, right.

25 A. Yes.

1 Q. Okay. And, again, as Rose Acre's CFO, I'm sure you're  
2 familiar with this report, correct?

3 A. Yes.

4 Q. Okay.

5 MR. BJORK: Your Honor, PX-624 --

6 THE COURT: It's already in.

7 MR. BJORK: -- is already in, thank you. May we  
8 publish it?

9 THE COURT: Yes.

10 BY MR. BJORK:

11 Q. So now we're looking at Rose Acre's 2008 financials,  
12 right?

13 A. Yes.

14 Q. Okay, and if you turn to the fifth page, again, you'll  
15 see it's titled Rose Acre Farms, Inc., and Subsidiary  
16 Consolidated Income Statement. Right?

17 A. Yes.

18 Q. Okay, and the date at the top is August 6, 2008, correct?

19 A. Yes.

20 Q. Okay. And by this point in time, Rose Acre and most of  
21 the rest of the egg industry had been complying with the  
22 Certified Guidelines for several years, correct?

23 A. Yes.

24 Q. Okay, and the 100% rule is in full effect by this time,  
25 right?

1 A. I don't know.

2 Q. Okay. If I were to represent to you that the 100% rule  
3 went into effect in 2003, would you have any reason to  
4 disagree with that?

5 A. I don't have any reason to disagree or agree.

6 Q. Okay.

7 A. So I don't know.

8 Q. Okay. By this point in time are you aware the  
9 backfilling ban under the UEP Certified Guidelines was also in  
10 full effect?

11 A. I don't know the exact date on it, but, yes, I believe it  
12 was.

13 Q. Okay. And looking, again, at revenue, we'll see that  
14 Rose Acre's revenue has now jumped to over \$608 million by  
15 this time, right?

16 A. Yes, but you also have to consider that our flock size  
17 has grown during this time as well.

18 Q. I understand, and we'll get to that.

19 A. Yes.

20 Q. But I just want you to confirm that by this point in  
21 time, 2008, revenue is up north of \$600 million, right?

22 A. Correct.

23 Q. And 520 million of that comes from the sale of eggs and  
24 egg products, correct?

25 A. Yes.

1 Q. Okay. And by comparison -- and we're going to do a split  
2 screen on the monitor so you can easily cross-reference the  
3 two -- in 2002, Rose Acre's revenue was down at \$217 million,  
4 correct?

5 A. Yes.

6 Q. Okay. And as you said before, that 2002 report that we  
7 looked at was based largely on sales that predated Rose  
8 Acre's entry into the Certified Program, correct?

9 A. Yes.

10 Q. Okay. And breaking it down by dozens produced, this 2008  
11 report indicates that Rose Acre's generating over \$0.90 of  
12 revenue per dozen of eggs produced at this time, correct?

13 A. Yes. The egg market is very, very cyclical, so...

14 Q. Okay. And by comparison, that number in 2002 was just  
15 \$0.35 per dozen, right?

16 A. Yes.

17 Q. Okay. So you'd agree, sir, that regardless of any  
18 expansion that Rose Acre may have engaged in, Rose Acre was  
19 generating significantly more revenue in 2008 because it was  
20 selling its eggs at a much higher price in 2008 than it was in  
21 2002, correct?

22 A. Yes, but the egg market is very cyclical and that would  
23 not be unusual. If you look over periods of years, revenues  
24 vary tremendously year over year.

25 Q. Okay. But this year, 2008, you will agree, Rose Acre is

1 making significantly more revenue for each dozen eggs it  
2 produced than it was in 2002, correct?

3 A. Yes.

4 Q. Okay. And with respect to your expanded production in  
5 2008, you were making a lot more money on that expanded  
6 production in 2008 than you would have been in 2002, right?

7 A. Yes.

8 Q. Okay. And turning to the top of the page, you'll see  
9 that, again, there's an entry for the Urner Barry average  
10 market pricing.

11 Do you see that?

12 A. Yes.

13 Q. And the year-to-date number there is around a buck  
14 thirty-six, correct?

15 A. Yes.

16 Q. Okay. And that means that the average price for a dozen  
17 large graded eggs for that year, 2008, was that number, \$1.36,  
18 correct?

19 A. Correct.

20 Q. All right. And again, by comparison, that number in 2002  
21 is a mere \$0.67, right?

22 A. Yes.

23 Q. Okay. And finally, in terms of profit, Rose Acre earned  
24 approximately \$110 million in profits in 2008, right?

25 A. Yes.

1 Q. Okay. So the company had gone from sustaining a loss in  
2 2002 to making over \$100 million in profit in 2008, right?

3 A. Yes.

4 Q. Okay.

5 A. However, if you -- if you look at --

6 Q. Well, sir, let's just -- please answer my questions.

7 Now, you would agree, sir, that by 2008, Rose  
8 Acre's fortunes have improved significantly from 2002, right,  
9 according to the reports that we just looked at?

10 A. Comparing these two years, yes.

11 Q. Okay. But in fact --

12 A. But if you look at our fiscal '05 and our fiscal '06 --

13 Q. I'm going to ask you about those years as well in just a  
14 moment, but I'm just doing this comparison of 2002 and 2008.

15 MR. CARTER: Your Honor --

16 THE COURT: You, Mr. Carter, can cover it on  
17 redirect.

18 BY MR. BJORK:

19 Q. And isn't it true, sir, that 2008 was a year of historic  
20 profits for Rose Acre?

21 A. Yes.

22 Q. Okay. Please, if you would, turn to the tab for 2009.

23 And this is D-0536.

24 Sir, that document is Rose Acre's 2009 financial  
25 statement, correct?

1 A. Yes.

2 MR. BJORK: Your Honor, we would seek the admission  
3 of D-0536.

4 THE COURT: Any objection?

5 MR. CARTER: No objection.

6 MR. BJORK: May we publish?

7 THE COURT: D-536 is admitted and then may be  
8 published.

9 (Exhibit received in evidence.)

10 MR. BJORK: Thanks.

11 BY MR. BJORK:

12 Q. And looking at 2009 -- well, please, sir, I guess turn to  
13 page 5, which is the income statement, the page that we've  
14 been spending some time with.

15 You would agree, sir, that 2009 is another good year  
16 for Rose Acre, right?

17 A. Yes.

18 Q. Okay, and according to this revenue in 2009 is just -- or  
19 is north of \$500 million, correct?

20 A. Yes.

21 Q. Okay. And Rose Acre's generating approximately \$0.75 of  
22 revenue for every dozen eggs produced, correct?

23 A. I don't see where you're pulling that number from.

24 Q. That's in the YTD per dozen?

25 A. Oh, for the shells.

1 Q. Yes, for the shell eggs.

2 A. Correct.

3 Q. Okay. The Urner Barry average price year-to-date is  
4 around a buck thirteen, right?

5 A. Yes.

6 Q. Okay. And the company earns another \$40 million in  
7 profits, correct?

8 A. Yes.

9 Q. Okay. And all of these numbers, sir, far exceeded their  
10 counterparts from 2002, correct?

11 A. From 2002, yes.

12 Q. Okay. And if you would, sir, if you could turn to the  
13 tab for 2010, and this is labeled D-0537.

14 And this, sir, is Rose Acre's 2010 financial  
15 statement, correct?

16 A. Yes.

17 MR. BJORK: Your Honor, may we admit D-0537 into  
18 evidence, please?

19 MR. CARTER: No objection.

20 THE COURT: 537 is admitted.

21 (Exhibit received in evidence.)

22 MR. BJORK: And may we publish?

23 THE COURT: Yes.

24 BY MR. BJORK:

25 Q. Please, if you would, sir, take a look at page 7, the

1 income statement page.

2 Here, sir, again, you would agree that profits for  
3 Rose Acre continued in 2010, correct?

4 A. We remain profitable, yes.

5 Q. Okay. Revenue for this fiscal year is, again, north of  
6 \$500 million, correct?

7 A. Correct.

8 Q. Okay. And Rose Acre was generating approximately between  
9 \$72 and \$0.73 in revenue for every dozen eggs it produced that  
10 fiscal year, correct?

11 A. Yes.

12 Q. Okay. And the Urner Barry average pricing again is north  
13 of a dollar, and a dollar nine for the year, correct?

14 A. Correct.

15 Q. Okay. And all of this equated to another nearly  
16 \$26 million in profits for Rose Acre, right?

17 A. Correct.

18 Q. Okay. So if my math is right, between 2008 and 2010, the  
19 Rust family's Rose Acre business had earned profits in excess  
20 of \$165 million, correct?

21 A. Which years?

22 Q. 2008 to 2010, the reports we just looked at?

23 A. I believe that's correct, yes.

24 Q. And again, for temporal context, by this point in time,  
25 all of the phase-ins of the UEP Certified cage space program

1 are complete, correct?  
 2 A. Yes.  
 3 Q. And both the 100% rule and the backfilling ban are in  
 4 full effect, correct?  
 5 A. Yes.  
 6 Q. Okay. Now, you testified before a little bit about 2005  
 7 and 2006 as being down years for the company, right?  
 8 A. Yes.  
 9 Q. Okay. And you're aware, sir, that UEP's backfilling ban  
 10 didn't go into effect until February 1, 2005, right?  
 11 A. I don't know the exact date, no.  
 12 Q. Okay. If I represented to you that that was the date,  
 13 would you have any reason to disagree?  
 14 A. I don't -- I don't agree or disagree --  
 15 Q. Okay.  
 16 A. -- because I don't know the date.  
 17 Q. Okay. And are you also aware or are you aware that the  
 18 Plaintiffs are alleging in this case that the ban on  
 19 backfilling resulted in lower output and higher egg prices --  
 20 A. Yes.  
 21 Q. -- in the market?  
 22 Okay. And you would agree that half of Rose  
 23 Acre's fiscal year 2005 sales are going to include sales from  
 24 calendar year 2004, right?  
 25 A. Correct.

1 Q. Okay. So, in other words, the losses from fiscal year  
 2 2005 are going to include sales from calendar year 2004 before  
 3 the backfilling ban is in place, right?  
 4 A. Within the first six months, yes.  
 5 Q. Okay. And those losses from 2005 and 2006, they were  
 6 fairly short-lived, were they not?  
 7 A. No.  
 8 Q. Well --  
 9 A. Two years.  
 10 Q. Well, the company was again profitable by fiscal year  
 11 2007, right?  
 12 A. That's the cyclical nature of the egg business. That's  
 13 -- that's how it works.  
 14 Q. I understand. I'm just asking if you returned to profits  
 15 in 2007?  
 16 A. We returned to profitability, yes.  
 17 Q. Okay. In fact, you generated, I think, about \$14 million  
 18 in pure profit in 2007, correct?  
 19 A. Oh, I don't know. We can look.  
 20 Q. Okay. Does that sound --  
 21 A. We were profitable.  
 22 Q. Okay. And fiscal year 2007 is going to contain some  
 23 sales from calendar year 2006, right?  
 24 A. Correct.  
 25 Q. Okay. And with regard to those losses in 2005 and 2006

1 that you testified to, you'd agree they were more than offset  
 2 by the record profits in 2008 alone, correct?  
 3 A. They were offset, but the -- the cash flow impact of 2005  
 4 into 2006 was horrific. It -- timing is everything in  
 5 finances.  
 6 Q. Okay, right, but my understanding from your reports is  
 7 that you lost a combined \$27 million in 2005 and 2006 and  
 8 generated nearly 110 million profits by 2008; is that right?  
 9 A. That's correct.  
 10 Q. Okay. So you would agree that when you take the  
 11 110 million in profit from 2008, add the \$40 million in  
 12 profits from 2009 and then the \$26 million in profits from  
 13 2010, you've more than offset those losses that you sustained  
 14 in 2005 and 2006, correct?  
 15 A. Correct, but I think if you look at 2011 and 2012, you'll  
 16 find that those were both loss years as well.  
 17 Q. Those may have been, sir, but isn't it true that those  
 18 loss years were driven not by lower egg prices but by higher  
 19 feed costs?  
 20 A. No.  
 21 Q. What were those losses in 2011 and 2012?  
 22 A. 2011, '12, I mean, they're always driven by egg prices.  
 23 Q. If you would, sir, please, if you could take a look at  
 24 the 2011 report?  
 25 A. Um-hum.

1 Q. Okay. And the -- if you look at the revenue number for  
 2 shell eggs YTD per dozen cents, do you see that?  
 3 A. Yes.  
 4 Q. What you're looking at is a consolidated financial  
 5 statement for 2011, right, sir, for Rose Acre?  
 6 A. Yes.  
 7 MR. BJORK: Okay. We seek admission of D-0538 into  
 8 evidence.  
 9 THE COURT: Any objection?  
 10 MR. CARTER: No objection.  
 11 THE COURT: D-0538 is admitted.  
 12 (Exhibit received in evidence.)  
 13 MR. BJORK: We would seek to publish it, Your Honor.  
 14 THE COURT: Go ahead.  
 15 BY MR. BJORK:  
 16 Q. Sir, if you look at revenue and the notation for  
 17 year-to-date per dozen cents --  
 18 A. Yes.  
 19 Q. -- is says the company is generating approximately \$0.75  
 20 in revenue for every dozen eggs it produced that year, right?  
 21 A. Correct.  
 22 Q. And the Urner Barry market price for that year is up at  
 23 \$1.11, right?  
 24 A. Correct.  
 25 Q. Okay. And by comparison, the numbers we looked at for

1 2002 were far less than that, correct?  
2 A. Correct, but the loss generated, if you look at the feed  
3 costs, you can see the feed costs is a higher feed cost  
4 number.

5 Q. That was my point earlier, the losses were not --  
6 A. However -- however, you can't look at two individual  
7 commodity markets that are reacting to one another. Typically  
8 at high feed cost times, egg prices are good.

9 Q. But -- okay. But you would agree, sir, that egg prices  
10 at this point in time, 2011, when you were allegedly  
11 sustaining losses, were not abnormally low, correct?

12 A. Egg prices were low comparative to costs, absolutely.

13 Q. Okay. But the Urner Barry price was not low relative to  
14 what it was in 2002 when you joined the program?

15 A. But compared to costs, it was abnormally low. I mean,  
16 obviously it doesn't support profitability.

17 Q. All right. My question is -- all right. I think we've  
18 exhausted that point. You can set that aside, sir.

19 MR. BJORK: Your Honor, I'm about to move in a  
20 different area of discussion with the witness. Did you want  
21 me to continue?

22 THE COURT: Well, against all hope, it appears,  
23 Mr. Marshall, we won't be concluding your examination today.

24 Would that be a fair assessment, folks?

25 MR. CARTER: If Mr. Bjork says so.